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OFFICE OF PETITIONS

In re Application of :
Michael Reed *et al.* :
Deposited: August 31, 1993 : **ON PETITION**
Application No. 08/113,955 :
For: **MULTIMEDIA SEARCH SYSTEM** :

This is a decision on the petition under 37 CFR 1.181(a)(3) filed on January 5, 2010, seeking supervisory review of the decisions of March 4, 2009 and October 9, 2009.

The petition for supervisory review of the decisions of August 6, 2008, March 4, 2009 and October 9, 2009 is **denied**.

A petition was filed on November 1, 2007 requesting, *inter alia*, that the above-identified application be: (1) accorded a filing date of August 31, 1993; and (2) amended to include a specific reference under 35 U.S.C. § 120 to application No. 07/426,917 (now U.S. Patent No. 5,241,671). The United States Patent and Trademark Office (USPTO) denied this petition in a decision issued on March 4, 2009. The USPTO indicated in the decision of March 4, 2009 and a decision issued on October 9, 2009 that the decision of March 4, 2009 was final agency action for purposes of judicial review. While a higher-level USPTO official may further review a decision rendered pursuant to delegated authority, such review is a matter which lies within the sound discretion of the higher level official and is not a matter of right. *See In re Staeger*, 189 USPQ 284, 285 (Comm'r Pat. 1974). The circumstances surrounding the instant petition counsel against further administrative review of the decisions of August 6, 2008, March 4, 2009 and October 9, 2009.

Petitioner collaterally challenged the decisions of August 6, 2008 and March 4, 2009 in the U.S. District Court for the Western District of Texas (District Court), and the District Court found the USPTO's ruling in the decisions of August 6, 2008 and March 4, 2009 to be "in accord with the applicable federal statutes." *See Encyclopaedia Britannica, Inc. v. Alpine Elecs. of Am., Inc.*, 643 F. Supp. 2d 874, 882 n.1 (W.D. Tex. 2009). Petitioner has appealed this District Court decision to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit), and is continuing to collaterally challenge the decision of March 4, 2009 in its appeal to the Federal Circuit. *See Encyclopaedia Britannica v. Alpine et al.*, Nos. 2009-1544, 1545 (Fed. Cir. filed Aug. 24, 2009).

Accordingly, principles of comity counsel against further administrative review of the decisions of August 6, 2008, March 4, 2009, and October 9, 2009 by the USPTO. *Accord McKechnie v. Lacks*, 122 Fed. Appx. 482, 487 (Fed. Cir. 2005) (“the PTO did not have jurisdiction to issue the patent until this court resolved the merits of the [interference] action”).

Accordingly, the petition under 37 CFR 1.181(a)(3) for supervisory review of the decisions of August 6, 2008, March 4, 2009 and October 9, 2009 is **denied**.

A handwritten signature in black ink, appearing to read 'RWBahr', is positioned above the printed name.

Robert W. Bahr
Acting Associate Commissioner
For Patent Examination Policy